

**RFP 5-70
ATTACHMENT B
Sample Contract**

**CONTRACT FOR THIRD PARTY ADMINISTRATOR
INDIANA STATE EMPLOYEE
WORKER'S COMPENSATION AND DISABILITY PLANS**

This contract is between _____ (hereinafter referred to collectively as "Contractor") and the State Personnel Department (hereinafter referred to as "State").

WHEREAS, the State desires to contract for products/services in the area of workers compensation and disability plan administration; and

WHEREAS, the Contractor is willing to provide such products and services;

NOW, THEREFORE, the **above-named** parties enter into this contract upon the following terms and conditions:

I. Duties of Contractor

The Contractor shall provide the following products/services relative to this contract:

A. Worker's Compensation

1. Administration of all claims, originating within the period of this contract and the preceding contract, filed under the State's Worker's Compensation Plan to include, but not limited to:
 - (a) System start-up procedures
 - (b) Processing the appropriate vouchers and claims to Auditor of State
 - (c) Investigation, including on-site, when deemed appropriate by Contractor or requested by the State, for:
 - Compensability
 - fraudulent activity
 - Third-party subrogation
 - (d) Activity checks
 - (e) Return-to-work procedures and case management performed by the Contractor
 - (f) Claim status reports
 - (g) Arrange representation at worker's compensation hearings
 - (h) Loss reports/risk information systems capabilities including ad hoc reporting
 - (i) Storage of closed claims
 - (j) Recommendation of claim reserve levels
 - (k) Distribution of benefit payments (and payroll stuffers) to employees and payments to providers, if requested by the State.
2. The services also include the preparation of and attendance at periodic claims reviews as well as any other necessary meetings between contractor and the State of Indiana. It is estimated that periodic claims reviews shall be held quarterly, but the State reserves the right to have reviews more frequently.
3. In addition to administration, other services required include, but are not limited to:
 - (a) Utilization review including hospitalization, concurrent review and diagnostic testing precertification in accordance with Contractor's normal standards
 - (b) Medical bill review
 - (c) Coordination of medical payments with the State of Indiana's Self-Funded Medical Plans and HMOs
 - (d) Coordination of legal representation
 - (e) Vocational/rehabilitation professionals
 - (f) Case management professionals
 - (g) Training under paragraphs I.H.

B. Disability

1. Administration of all claims, originating within the period of this contract and the preceding contract, filed under the State's Disability Plan to include, but not limited to:
 - (a) System start-up procedures
 - (b) Processing vouchers to Auditor of State per payroll cycle
 - (c) Disability status investigation, when deemed appropriate by Contractor or requested by the State, including on-site, for:
 - eligibility for benefits
 - fraudulent activity
 - third-party subrogation
 - (d) activity checks
 - (e) case management for return to work performed by Contractor
 - (f) claim status reports
 - (g) loss reports
 - (h) lay representation at State Employees Appeals Commission and Grievance Hearings
 - (i) age and impairment limitation notice to recipients
 - (j) other income/employment investigations
 - (k) pursue Social Security Disability Application with claimant and assist claimant in filing
 - (l) verification of and offset of income received from other sources
 - (m) partial disability placements as described in Section 3.4.5 of the RFP
 - (n) voucher for provider payment, when necessary, for independent examinations and services related thereto
 - (o) recommendation of claims reserve levels
 - (p) coordination, with agency, of appropriate compensation for employees augmenting disability with accrued leave
 - (q) ad hoc reporting
 - (r) closed claim storage
 - (s) distribution of benefit payments (and payroll stuffers) to employees and payments to providers.
 - (t) processing of minimum benefits under 31 IAC 3-1-21.
2. The services also include the preparation of and attendance at periodic claims reviews as well as any other necessary meetings between the contractor and the State of Indiana. It is estimated periodic claims reviews shall be held quarterly, but the State reserves the right to have reviews more frequently.
3. In addition to administration, other services include, but are not limited to:
 - (a) coordination of legal representation
 - (b) vocational rehabilitation services
 - (c) training under paragraph I.H.

C. Worker's Compensation and Disability

1. Contractor is responsible for coordination of services, including voucher issuance, for those claims which are filed under both the Worker's Compensation and Disability Plans. These involve lost time claims and include the following:
 - (a) Tortious injuries - The employee suffered an occupational injury by the tortious act of another person. The employee receives 100% of his/her average weekly wage from disability (after the 7 day elimination period). Medical treatment necessitated by the occupational injury will be coordinated and paid for like any Worker's Compensation claim.
 - (b) Non-tortious injuries - The employee's wage replacement from workers, compensation is less than the employee's salary continuation under the Disability Plan, due to the maximum for the state of Indiana. The employee would receive the difference, up to the maximum allowed under the Disability Plan (after the 30 day elimination period).
 - (c) Minimum benefits - When the employee's wage replacement from worker's compensation exceeds salary continuation benefits under the disability plan, the employee is to receive a minimum benefit of E.A.P., health, dental, vision and life insurance contributions under 31 IAC 3-1-21.

2. For those claims filed under both Plans, the TPA shall provide the same services as indicated in paragraphs I.A. and I.B.

D. Preferred Provider Network

1. The preferred provider network is to cover the entire state and include physicians who have education and experience in occupational injuries and diseases as well as the worker's compensation system. This includes, but is not limited to, orthopaedic physicians and surgeons, hand specialists, neurologists, and occupational therapists.
2. At a minimum, the network is to provide access to a primary care physician within a ten (10) mile radius of the employee's workstation for those employees who work in the following counties:
3. The network is to provide access to a primary care physician in the network within a thirty (30) mile radius of the employee's work station for those employees who work in all other counties.
4. Appointments should be available within twenty-four (24) hours of scheduling, except for specialty physicians.
5. The network shall also include hospital emergency rooms and industrial clinics that provide emergency services.
6. The Contractor will work with the State to continuously improve the network.

E. Partial Disability Program

The Contractor is expected to assist in a modified duty placement, known as Partial Disability in the Disability Plan, for employees who have been given temporary or permanent restrictions and who are still eligible for benefits under the plan. The Contractor is responsible for coordination of this process with the Disability Division of State Personnel, the employee, and the appropriate agency.

The Contractor's staff will identify possible candidates for these placements and, working with appropriate medical personnel, determine the employee's ability to return to work as well as any restrictions that may exist.

F. Monthly Reports

The Contractor shall provide, on a monthly basis, the following information for all active worker's compensation and disability claims:

- name of employee
- social security number
- date of injury diagnosis for that claim
- disposition of the claim: accepted, pending, denied
- dollar amount paid
- recommended reserve

For each claim closed for a given month:

- name of employee
- social security number
- date of injury
- diagnosis for that claim
- date claim was closed (or the date the Contractor is no longer paying medical bills related to the injury)
- dollar amount paid

G. Other Services

The Contractor will work closely with the State on problem resolution, plan reporting, projecting plan costs, etc.

H. Training

1. Contractor will assist in briefing relevant groups (e.g., labor unions, insurance vendors, executive staff and agency heads), concerning program implementation and operation.
2. Ongoing awareness and communication of this program is the responsibility of the Contractor, in conjunction with the State Personnel Department. This includes producing and distributing two (2) payroll stuffers a year regarding the Worker's Compensation and Disability Plans and conducting quarterly on-site training seminars at the Indiana Government Center in Indianapolis, Indiana, highlighting workplace safety and the overall administration of the Plans. The training expenses are incorporated into the charge for lost time workers, compensation claims.

I. Performance Bonds

1. No performance bond will be required.

J. Consulting Services

The Contractor will provide periodic consulting services including:

- Changes in the Contractor's personnel which will affect the State
- Changes in the PPO network; i.e., additions of physicians in the network
- Successes in the cost-containment services being utilized on the State's claims
- Informative articles on workplace safety, etc.
- Legislative updates
- Pertinent decisions handed down by the Worker's Compensation Board, Court of Appeals, and/or Supreme Court
- Any other information that would be informative to the State

K. On line access

On line access will be made available for both workers compensation and disability.

L. Coordination with Auditor of State as Fiscal Agent

The Auditor of State will act as the fiscal agent for payments to claimants and providers.

II. Consideration

A. Complete Listing of Costs

All costs to be charged to the State for the performance by the Contractor of the Contractor's obligations pursuant to this contract are expressly set forth below.

B. Rate Guarantee

There will be no change in fees during the four (4) years of the contract period.

C. Claims Handling

The fixed price per Worker's Compensation claim and the disability administrative fee include handling claims to the conclusion (or from cradle to grave). Claims incurred and reported to the Contractor during the term of the contract, which are still open as of the contract expiration date, will be handled by the Contractor beyond the contract expiration date. No additional fixed workers, compensation administrative fee or fixed disability charge will be paid for the administration of these run off claims; but, variable costs incurred will continue to be paid by the State.

On contract termination, the State has the option to transfer responsibility for claims, that were incurred but not reported to Contractor during the term of this contract, to the new plan administrator. If the State elects to have Contractor administer these incurred but not reported claims, Contractor will be entitled to the fixed one-time Worker's Compensation

administrative fee and variable allocated Worker's Compensation or Disability costs; but, no additional payments of the fixed biweekly disability charge will be due.

D. Worker's Compensation

1. Fixed Worker's Compensation Pricing

ONE-TIME ADMINISTRATIVE FEE PER CLAIM

- (a) A one-time administrative fee of _____ will be charged _____. No administrative fee will be charged for Notice Only claims in excess of one thousand (1,000) Notice Only claims per contract year. For this purpose, "Notice Only" means those claims reported to Contractor by a state agency that do not meet the definition of "Medical Only" or "Lost Time" claim.
- (b) A one-time administrative fee _____ will be charged for each new or reopened Medical only claim. For this purpose, "Medical Only" means any claim processed that solely reflects payment of medical bills and related pharmaceuticals and none of the activities as indicated in the definition of a "Lost Time" claim.
- (c) A one-time administrative fee _____ will be charged for each new or reopened Lost Time claim. For this purpose, "Lost Time" means any claim processed that encompasses any of the following:
 - (1) Wage replacement benefits under Temporary Total Disability or a Permanent Partial Impairment payment.
 - (2) A field investigation as required by Contractor's standards or requested by the State.
 - (3) Litigation.
 - (4) Medical costs paid in excess of ten thousand dollars (\$10,000).
 - (5) Agreement of the State to pay the Lost Time rate due to the level of services requested by the State.
- (d) The one-time fixed price charge encompasses all costs of contract and claims administration including, but not limited to:
 - (1) system start-up costs
 - (2) processing the appropriate vouchers and claims to Auditor of State
 - (3) investigation, including on-site, when deemed appropriate by the Contractor or requested by the State, for:
 - compensability
 - fraudulent activity
 - third-party subrogation
 - (4) activity checks
 - (5) return-to-work procedures and case management performed by the adjuster
 - (6) claim status reports
 - (7) lay representation at worker's compensation hearings
 - (8) loss reports
 - (9) storage of closed claims and following disposition instructions
 - (10) establishment of claims reserve
 - (11) obtaining of disposition instructions at end of storage period and following disposition instructions
 - (12) On line access
 - (13) the preparation of and attendance at periodic claims reviews as well as any other necessary meetings between the Contractor, its subcontractors and the State of Indiana.
- (e) The fixed price per claim charge excludes the following expenses:
 - (1) legal fees
 - (2) expert witnesses
 - (3) vocational/rehabilitation professionals
 - (4) case management professionals
 - (S) professional surveillance services

- (6) Independent Medical Exams
- (7) utilization review
- (8) medical bill review
- (9) chiro/PT UR
- (10) Preferred Provider Network
- (11) index filing

2. Variable Worker's Compensation Pricing

SERVICES NOT INCLUDED IN THE ONE-TIME ADMINISTRATIVE FEE PER CLAIM

During contract administration, the cost of services not included in the one-time administrative fee per claim must be estimated and approved before the service can be provided. The State will not pay the Contractor for variable costs which are not approved by the State in advance. The following identifies all charges not included in the fixed price. Expenses not specifically excluded will be considered to be within the fixed price.

SERVICE	COMPANY PROVIDING SERVICE	CHARGE	ESTIMATED AVERAGE COST PER CLAIM
LEGAL REPRESENTATION			
LEGAL			
LEGAL			
LEGAL			
CASE MANAGEMENT			
VOCATION/REHAB PROF.			
UTILITIZATION REVIEW			
MEDICAL BILL REVIEW			
CHIRO/PT UR			
IME			
PREFERRED PROVIDER NETWORK			
SURVEILLANCE			
EXPERT WITNESSES			
FUNCTIONAL CAPACITY ASSESSMENTS			

3. Charge to move from one type of claim to another

FROM	TO MEDICAL CLAIM	LOST TIME CLAIM	WC/DISAB.
FIRST 1,000 NOTICE ONLY			
NOTICE ONLY CLAIMS IN EXCESS OF 1,000 PER YEAR			
MEDICAL ONLY CLAIMS	XXXXXXXXXXXXXXXXXXXX		
LOST TIME CLAIMS	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	

Cumulative claim fees will not exceed the fee for the category to which the claim is finally assigned.

E. Disability

1. Fixed Disability Charge

- (a) The fixed charge for administration of short term, long term, and partial disability claims is an administrative service fee per eligible employee (as defined in Section 1.2.3 and 4 of the RFP) of forty-one cents (\$0.41) bi-weekly.
- (b) The per employee administrative service fee encompasses all of the following services for the short term, long term, partial disability claims including, but not limited to:

- (1) system start-up procedures
- (2) processing the appropriate claims and vouchers to Auditor of State
- (3) disability status investigation, including on-site, when deemed appropriate by the Contractor or requested by the State, for:
 - eligibility for benefits
 - fraudulent activity
 - third-party subrogation
- (4) activity checks
- (5) case management for return to work performed by an adjuster
- (6) claim status reports
- (7) loss reports
- (8) lay representation at State Employees Appeals Commission and Grievance Hearings
- (9) age and impairment limitation notice to recipients
- (10) other income/employment investigations
- (11) assurance of Social Security Disability application and assistance in pursuit
- (12) verification and offset of income received from other sources
- (13) partial disability placements as described in Section 3.4.5 of the RFP
- (14) provide the appropriate voucher or claim to Auditor of State for payment, when necessary, for independent examinations and services related thereto
- (15) recommendation of claim reserve levels
- (16) coordination of appropriate compensation for employees augmenting disability with accrued leave
- (17) ad hoc reporting
- (18) storage of closed claims and following disposition instructions
- (19) On line access
- (20) the preparation of and attendance at periodic claims reviews as well as any other necessary meetings between the Contractor, its subcontractors and the State of Indiana.

(c) The administrative service fee excludes the usual allocated expenses including:

- (1) legal fees
- (2) expert witnesses
- (3) vocational rehabilitation
- (4) professional surveillance services
- (5) Independent Medical Exams
- (6) Functional Capacity Assessments
- (7) social security filing
- (8) case management professionals

2. Variable Disability Pricing

SERVICES NOT INCLUDED IN THE FIXED ADMINISTRATIVE SERVICE FEE PER ELIGIBLE EMPLOYEE

During contract administration, the cost of services not included in the fixed administrative service fee per eligible employee must be estimated and approved before the service can be provided. The State will not reimburse the Contractor for variable costs which are not approved by the State in advance. The following identifies all charges not included in the fixed fee. Expenses not specifically excluded will be considered to be within the fixed fee.

SERVICE	COMPANY PROVIDING SERVICE	CHARGE	ESTIMATED AVERAGE COST PER CLAIM
LEGAL REPRESENTATION			
EXPERT WITNESSES			
VOCATIONAL/ REHABILITATION			
PROFESSIONAL SURVEILLANCE			
INDEPENDENT MEDICAL EXAMINATIONS (PHYSICAL)			

INDEPENDENT MEDICAL EXAMINATIONS (MENTAL/NERVOUS)			
FUNCTIONAL CAPACITY ASSESSMENTS			
SOCIAL SECURITY FILING			
SOCIAL SECURITY FILING			
CASE MANAGEMENT			

F. Worker's Compensation and Disability

A one-time charge of six hundred twenty six dollars (\$626) is established for new claims which are covered by both the Worker's Compensation and Disability Plans. All services detailed at II.D.1 and II.E.1 are included in this fixed price which is in lieu of the fixed one-time administrative fees set forth in paragraph II.D.1.

G. Other Included Expenses

- (1) Training
The initial training expenses have been amortized over the life of the contract and included in the per claim price quoted for lost time claims filed under the Worker's Compensation Plan.
- (2) The administrative service fees include the cost of:
 - (a) periodic consulting services
 - (b) on line access capabilities
 - (c) development and distribution of a "Procedure Manual" to state agencies explaining the protocol for reporting claims, etc.

H. Loss Control Services

Optional loss control services may be requested by the state and if utilized will be billed according to the following schedule of costs. The State will not reimburse the Contractor for loss control services that have not been approved by the State in advance.

(1) Evaluation Survey	
(2) Quarterly Visits by Safety Consultant	
(3) Conduct Training Programs	
(4) Occupational Health Consultant	
(5) Environmental Health Engineer	

- I. The Index Bureau cost to the State will be the Contractor's actual cost per report. The cost currently is \$x.xx per report.

J. Travel and Travel Related Expenses

The State will only reimburse the Contractor for travel and travel related expenses in those instances where the State has expressly agreed to pay travel and travel related expenses in this document. Such payments shall be made in accordance with and are limited to the policies governing travel for employees of the State. The State has provided a copy of its current travel policies to the Contractor and will provide updates to the Contractor as they are issued.

III. Term

The term of this contract shall be for a period of four years, beginning July 1, 2005 and ending June 30, 2009.

IV. Order of Preference

If there be any conflict between the provisions expressly contained in this document, the RFP, the proposal, and/or any other documents incorporated by reference or appended hereto, then the provisions expressly set forth in the first_30 pages of this document shall govern. Any other inconsistency or ambiguity shall be resolved by giving preference to documents, incorporated by reference and/or appended hereto, which were prepared by the State.

V. Independent Contractor

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and worker's compensation insurance for the Contractor's employees.

VI. Work Standards

The Contractor agrees to execute its respective responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product or the working relationship with those individuals assigned to work on this Contract, the State may request the replacement of any or all such individuals.

VII. Confidentiality of State Information

The Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain confidential and protected data, therefore, the Contractor promises and assures that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this contract will not be disclosed to or discussed with third parties without the prior written consent of the State; provided that the provisions of this paragraph shall not apply to disclosures reasonably required for the Contractor to perform services hereunder nor apply to disclosures required by law.

VIII. Confidentiality of Data, Property Rights in Products, and Copyright

The Contractor further agrees that all information, data, findings, recommendations, proposals, etc. by whatever name described and by whatever form therein, secured, developed, written, or produced by the Contractor, solely with funds from the State, in furtherance of this Contract shall be the property of the State and that the Contractor shall take all steps reasonably necessary to preserve such property rights. However, any costs to obtain copyrights shall be at the cost of the State and Contractor will not seek to copyright these materials on the State's behalf unless expressly instructed to do so. By this contract the Contractor specifically waives and/or releases to the State any recognizable property right in the Contractor to copyright or patent such information, data, findings, recommendations, proposals, etc.

IX. Ownership of Documents and Materials

All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State of Indiana and all such materials will be the property of the State of Indiana. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this Contract shall be available to the State.

X. Progress Reports

The Contractor will submit progress reports to the State upon request. The report will be oral, unless the State upon receipt of the oral report should deem it necessary to have it in written form. The progress report shall serve the purpose of assuring the State that work is progressing in line with the schedule, and the completion can be reasonably assured on the scheduled date.

XI. Access to Records

The Contractor and its subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the cost incurred by the Contractor on the State's behalf and shall make such materials available at their respective offices at all reasonable times during the contract period and for seven (7) years from the date of final payment under the contract, for inspection by the State or by any other authorized representative of the State Government. Contractor may convert paper records to a microfilm format for the purposes of retention if the microfilm comports with the standards set forth in Indiana Supreme Court Administrative Rule 6. Copies shall be furnished at no cost to the State if requested.

The State shall make available to Contractor such records as are necessary to verify the accuracy of payments made under this contract by the State to the Contractor.

The State shall instruct the administrators of the State's medical benefit plans to cooperate with the Contractor in the Contractor's administration of claims filed under the State's Disability Plan.

XII. Assignment

The Contractor shall not assign or subcontract the whole or any part of this contract without the State's prior written consent, except that the Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned.

The State acknowledges and consents to Contractor's use of VHA TriState Health Plans and MedView Services, Inc. to assist in the development and management of the statewide managed care network of preferred hospitals and physicians.

The following are excluded from the definition of "subcontractor," for the purposes of Contractor notice to the State and the State's right to approve subcontracts:

- (A) Selection of providers to be included in the PPO network.
- (B) Selection of health care professionals outside the PPO network.
- (C) Any purchase, acquisition or procurement by the Contractor of supplies, equipment, and materials in the normal course of the Contractor's business.
- (D) Any purchase, acquisition or procurement by the Contractor, the principal purpose of which does not directly involve the performance of obligations under this contract.
- (E) Any purchase, acquisition or procurement precipitated by or arising from urgent program requirements which, in the exercise of prudent business judgment, compel immediate action by the Contractor to preserve and/or enhance the program or the interests of persons covered by the plans; provided that the State Personnel Department and the Department of Administration give prior written approval for any purchase, acquisition or procurement which exceeds a thirty (30) day period; and that, all purchases, acquisitions or procurements shall be reported and, wherever possible, prior notice shall be given.

XIII. Insolvency

The State of Indiana may immediately cancel this contract without liability to the Contractor in the event of any of the following or any other comparable event:

- A) insolvency of the Contractor;
- B) filing of a voluntary petition in bankruptcy by the Contractor;

- C) filing of any involuntary petition in bankruptcy against the Contractor;
- D) appointment of a receiver or trustee for the Contractor; or
- E) execution of an assignment for the benefit of creditors by the Contractor, provided that such petition, appointment or assignment is not vacated or nullified within fifteen (15) days of such event.

XIV. Successors and Assignees

The Contractor binds its successors, executors, administrators, and assignees to all covenants of this contract. Except as above set forth, the Contractor shall not assign, sublet or transfer its interest in this contract without the prior written consent of the State of Indiana.

XV. Changes in Work

The State and the Contractor agree that either party shall be able to suggest changes, any other provision of this contract notwithstanding. Any such changes shall be made in the following manner:

- (A) For any change in this contract which does not affect the period of performance, major benefit or administrative provision, risk level, price, or other financial consideration, by written change notice from the State countersigned by the Contractor.
- (B) Any other change shall be made by formal amendment of this contract signed by all parties required to affix their signature thereto by Indiana law.

XVI. Force Majeure: Suspension and Termination

In the event that either party is unable to perform any of its obligations under this contract or to enjoy any of its benefits because of (or if failure to perform the services is caused by) natural disaster, actions or decrees of governmental bodies or communication line failure not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may by giving written notice terminate this contract.

XVII. Renewal

This contract cannot be renewed.

XVIII. Incorporated by Reference

The Request for Proposals _____ (RFP) distributed by the State Department of Administration on _____ and the contractor's response to the RFP submitted _____, post proposal conference submission of _____, Best and Final Offer dated _____ thereto, and extension letter dated _____ are hereby incorporated by reference into this Contract and are attached as exhibits thereto.

- A. Reference hereafter to certain of the subjects, topics, provisions, terms, obligations, rights, duties and other included matters in said instruments is not meant to exclude the importance of other portions of said instruments rather said reference(s) is (are) intended to amplify upon or clarify the import, meaning and/or effect(s) thereof as some may relate to the rights, duties, and obligations of the parties to the Contract.
- B. The reference or non-reference to certain portions of RFP and Proposal shall not preclude the reasonable construction of the terms of said instruments which may be required from time to time during the tenure of this Contract; provided, that when the parties desire the clarifying construction of significant areas of dispute, said construction shall be effectuated only by the written mutual agreement of the parties hereto, or as otherwise provided in the RFP and Proposal.

XIX. Non-discrimination

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, the Contractor and its subcontractors, if any, shall not discriminate against any employee or applicant for employment in the performance of this Contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract. The Contractor's execution of the Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

XX. Funding Cancellation

If the Director of the Indiana Office of Management and Budget makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this contract, the contract shall be canceled. A determination by the OMB Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

XXI. Termination for Convenience

The performance under this Contract may be terminated, in whole or in part by the State whenever, for any reason, the State shall determine that such termination is in the best interest of the State. Termination of this Contract shall be effected by delivery of a Termination Notice to the Contractor at least thirty (30) days prior to termination effective date, specifying the extent to which performance of services under this Contract is terminated and the date upon which such termination becomes effective. The Contractor shall be compensated for services as herein provided, but in no case shall total payment made to Contractor exceed the Contract price due to the date of termination.

It is expressly understood by the Contractor and the State that each party reserves the right to cancel the Contract for default by the other party in the performance of any duties and obligations hereunder, which default shall not be substantially cured within sixty (60) days after written notice is given to the defaulting party, specifying the default and the date of termination. The non-payment by the State of the monies due in accordance with the terms of this Contract constitutes an event of default and is cause for termination by the Contractor of this Contract with notice of default and the opportunity to cure as conditions precedent to termination.

Should this Contract terminate for any reason, the Contractor shall process all claims incurred and reported to the Contractor prior to the date of termination and for which Contractor has been paid.

XXII. Payments

- A. All payment obligations are subject to the availability of monies and shall be made in arrears in accordance with Indiana law and the State fiscal policies and procedures and in this regard the Contractor agrees to execute such state payment (invoice) forms not inconsistent herewith.
- B. Contractor shall submit itemized billings and state payment (invoice) forms on a semi-monthly basis. The billings will be submitted both on paper and on computer diskette or on such other electronic format as the Contractor, State and Auditor shall agree. These billings are to include all charges and fees that have been examined and approved by the Contractor as being payable under Section II of this Contract, with the exception of the Fixed Disability Charge established in paragraph II.E.1. Invoices are payable within 14 days of receipt by the State.
- C. The State will remit to Contractor on a biweekly basis payment of the Fixed Disability Charge, established in paragraph II.E.1., and Contractor will be provided with information, in electronic format, which identifies the persons for whom coverage is being provided.

XXIII. Taxes

The State of Indiana is exempt from State, Federal, and local taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this contract.

XXIV. Penalties/Interest/Attorney's Fees

The State will in good faith perform its required obligations hereunder and, does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 517-5-1, et seq., IC 34-2-22-1 et seq. and IC 34-4-16-1.1 et seq.

XXV. Compliance with Laws

The Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this contract shall be reviewed by the State and the Contractor to determine whether the provisions of the contract require formal modification.

- A. The contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the contractor is not familiar with these ethical requirements, the contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If the contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this contract immediately upon notice to the contractor. In addition, the contractor may be subject to penalties under Indiana Code § 4-2-6-12.
- B. The Contractor certifies by entering into this Agreement, that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the Contractor agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

The Contractor warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify the State of any such actions. During the term of such actions, Contractor agrees that the State may delay, withhold, or deny work under any Supplement or contractual device issued pursuant to this Agreement.

If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State of Indiana or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so is a material breach of the contract and grounds for immediate termination of the Agreement and denial of further work with the State.

The Contractor hereby affirms that it is properly registered and owes no outstanding reports with the Secretary of State.

Contractor agrees that the State may confirm, at any time, that no liabilities exist to the State of Indiana, and, if such liabilities are discovered, that State may bar Contractor from contracting with the State in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the entity is current in its payment on its liability to the State and has submitted proof of such payment to the State.

XXVI. Default by State

If the State, after sixty (60) days written notice, fails to correct or cure any breach of this contract, then the Contractor may cancel and terminate this agreement and collect monies due up to and including the date of termination.

XXVII. Governing Laws

This contract shall be construed in accordance with and governed by the laws of the State of Indiana, and suit, if any, must be brought in the State of Indiana.

XXVIII. Indemnification

Contractor agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officers, and employees from all claims and suits including court costs, attorney fees, and other expenses, caused by any act or omission of the Contractor and/or its subcontractors if any.

XXIX. Substantial Performance

This contract shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modification thereof.

XXX. Maintaining a Drug-Free Workplace

A. Contractor, or, if a grant is involved, Grantee hereby covenants and agrees to make a good faith effort to provide and maintain during the term of this contract a drug-free workplace, and that it will give written notice to the contracting state agency and the Indiana Department of Administration within ten (10) days after receiving actual notice that an employee of Contractor assigned work for the State has been convicted of a criminal drug violation occurring in Contractor's workplace.

B. In addition to the provisions of subparagraph A above, if the total contract amount set forth in this contract is in excess of \$25,000.00, Contractor or Grantee hereby further agrees that this contract is expressly subject to the terms, conditions, and representations contained in the Drug-Free Workplace Certification For the purpose of this certification, "employee" is limited to employees of the Contractor that are assigned to work for the State.

C. It is further expressly agreed that the failure of Contractor or Grantee to in good faith comply with the terms of subparagraph A above or falsifying or otherwise violating the terms of the certification referenced in subparagraph B above shall constitute a material breach of this contract, and shall entitle the State to impose sanctions against the Contractor including, but not limited to, suspension of contract payments, termination of this contract, and/or debarment of the Contractor from doing further business with the State for up to three (3) years.

D. Drug-Free Workplace Certification.

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor has been convicted of a criminal drug violation occurring in the Contractor's workplace.

False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, Contractor hereby further agrees that this contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

XXXI. Waiver of Rights

No right conferred on either party under this contract shall be deemed waived and no breach of this contract excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

XXXII. Conflict of Interest

- A. As used in this section:
 "Immediate family" means the spouse and the unemancipated children of an individual.
 "Interested party," means:
 - 1. The individual executing this Contract;
 - 2. An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or
 - 3. Any member of the immediate family of an individual specified under subdivision 1 or 2.
 "Department" means the Indiana Department of Administration.
 "Commission" means the State Ethics Commission.
- B. The Department may cancel this Contract without recourse by Contractor if any interested party is an employee of the State of Indiana.
- C. The Department will not exercise its right of cancellation under section B, above, if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the State of Indiana of the interested party does not violate any statute or rule relating to ethical conduct of State employees. The Department may take action, including cancellation of this Contract, consistent with an opinion of the Commission obtained under this section.
- D. Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.

XXXIII. Disputes

Should any disputes arise with respect to this contract, the Contractor and the State agree to act immediately to resolve any such disputes. Time is of the essence in the resolution of disputes.

The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this contract which are not affected by the dispute. Should the Contractor fail to continue without delay to perform its responsibilities under this contract in the accomplishment of all nondisputed work, any additional costs incurred by the Contractor or the State as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State of Indiana for such costs. If the Contractor and the State cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of said dispute, then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration who shall reduce the Commissioner's decision to writing and mail or otherwise furnish a copy of thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for the Commissioner's decision. The Commissioner's decision shall be final and conclusive unless the Contractor mails or otherwise furnishes to the Commission of Administration, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner, the Commissioner may reconsider the Commissioner's decision. If no reconsideration is provided within ten (10) working days, the Contractor may submit the dispute to an Indiana court of competent jurisdiction.

The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this contract will no be cause for Contractor to terminate this contract, and the Contractor may bring suit to collect without following the disputes procedure contained herein.

XXXIV. Audits

Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State.

XXXV. Condition of Payment

All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of federal, state, or local law.

XXXVI. Security and Privacy of Health Information

The Contractor agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in all activities related to this Contract, to maintain compliance throughout the life of this Contract, to operate any systems used to fulfill the requirements of this Contract in full compliance with HIPAA and to take no action which adversely affects the State's HIPAA compliance.

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor assures that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Contractor in the course of its work under this Contract. The Contractor agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State including, as required by the final regulations.

XXXVII. Severability

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

XXXVIII. Termination for Default

- A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this Contract in whole or in part, if the Contractor **fails to**:
1. Correct or cure any breach of this Contract;
 2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
 3. Make progress so as to endanger performance of this Contract; or
 4. Perform any of the other provisions of this Contract.
- B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

XXXIX. Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

FOR THE CONTRACTOR:

By: _____

(Printed name)

Date: _____

FOR THE STATE OF INDIANA:

Approved:

Debra F. Minott
Director
State Personnel Department

Date: _____

Approved as to form and legality:

Stephen Carter
Attorney General of Indiana

Date: _____

By: _____

(Printed name)

Date: _____

Approved:

Earl A. Goode
Commissioner
Indiana Dept. of Administration

Date: _____

Approved:

Charles E. Schalliol
Director
Indiana Office of Management and Budget

Date: _____